

**UT 99-1**

**Tax Type: USE TAX**

**Issue: Rolling Stock (Vehicle Used Interstate for Hire)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARING  
CHICAGO, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	Case No. 97 ST 0000
	)	Claim for Credit
v.	)	
	)	Administrative Law Judge
<b>"ZIP-EM-UP" FASTENER CORP.,</b>	)	Mary Gilhooly Japlon
Taxpayer	)	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General John Alshuler on behalf of the Illinois Department of Revenue; The Law Offices of Alan R. Bruggeman, by Alan R. Bruggeman, on behalf of "Zip-em-Up" Fastener Corp.

**SYNOPSIS:**

The Department of Revenue (hereinafter "Department") issued a Notice of Tentative Denial of Claim to "Zip-em-UP" Fastener Corporation (hereinafter "Zip-em-Up" or "taxpayer") on October 27, 19xx. The taxpayer filed the claim in the amount of \$78,400, asserting that its purchase of an aircraft is exempt as rolling stock being used in interstate commerce. Mr. "Reginald Moneyfeathers" testified on behalf of the taxpayer.

Following a review of the evidence and the application of the law thereto, it is recommended that this matter be resolved in favor of the Department of Revenue.

**FINDINGS OF FACT:**

1. The taxpayer, "Zip-em-Up" Fastener Corporation, filed an Amended Motor Vehicle Use Tax Return on February 28, 19xx, claiming that it overpaid tax in the amount of \$78,400. (Dept. Group Ex. No. 1; Tr. pp. 6-7).
2. The basis of the taxpayer's corrected return as set forth thereon is the taxpayer's assertion that its purchase of an aircraft was exempt from tax as it is rolling stock traveling in interstate commerce. (Dept. Group Ex. No. 1; Tr. pp. 6-7).
3. On October 27, 19xx the Department issued a Notice of Tentative Denial of Claim to the taxpayer. (Dept. Group Ex. No. 1; Tr. pp. 6-7).
4. The basis of the denial as stated thereon is that the Department has not established that the tax was paid in error or that issuing a credit memorandum would not result in unjust enrichment to the taxpayer. (Dept. Group Ex. No. 1).
5. In late 1995 and early 1996, the taxpayer determined that it wanted to acquire a larger aircraft than it currently owned. (Tr. p. 10).
6. The taxpayer reasoned that it would use a larger aircraft not only for corporate business purposes, but also as a charter to help defray some expenses of the aircraft. (Tr. p. 10).
7. The aircraft ultimately purchased (Beechcraft King Air-200) was determined to be ideal for charter work, as well as for business use. (Tr. p. 11).
8. The date of purchase of the aircraft was April 5, 19xx. (Tr. p. 56).
9. The new aircraft had different capabilities and amenities than the aircraft previously owned by the taxpayer. (Tr. p. 11).

10. The taxpayer contacted "Planes R Us" when searching for an aircraft to purchase.  
(Tr. p. 12).
11. "Planes R Us" recommended that the taxpayer's aircraft be put into a charter leasing program with "Prop Wash Services" ("PWS"). (Tr. pp. 12-13).
12. In order to be part of the charter leasing program with PWS, an aircraft must qualify for a "part 135" certificate. (Tr. p. 15).
13. A 135 certificate is a Federal Aviation Administration ("FAA") regulation certificate authorizing an aircraft to be chartered. (Tr. p. 16).
14. The Aircraft Lease and Aviation Services Agreement entered into between the taxpayer and "PWS" was executed June 7, 19xx by the taxpayer, and on June 12, 19xx by "PWS". (Dept. Ex. No. 2; Tr. p. 56-57).
15. The aircraft was put into charter service approximately five months after its purchase.  
(Tr. p. 18).
16. The aircraft was located in Texas when purchased by the taxpayer. (Tr. p. 18).
17. The aircraft became permanently based in Illinois at the "Someplace", Illinois airport in March 19xx, subsequent to taxpayer's inspection of the aircraft. (Tr. p. 19).
18. "PWS" has a marketing program that enables an interested person or entity to charter an aircraft that fits its particular needs. (Tr. p. 20).
19. The taxpayer is located in "Somewhere", Illinois, and also has a facility in "Someplace Else", Indiana. (Tr. p. 26).
20. The taxpayer flies into Rockford, Illinois for repair or maintenance work, as Rockford is the "Corporate" Aircraft Maintenance Center. (Tr. p. 26).

21. Based upon the specifications of the aircraft, its ideal flying range is less than 600 miles. (Tr. p. 28).
22. The typical range of flight for this aircraft is 500 to 600 miles. (Tr. p. 29).
23. Interstate travel is ideal for this aircraft as it is less economical to fly short distances. (Tr. p. 29).
24. Besides its charter flights, the aircraft flies employees, officers or customers of "Zip-em-Up" Fastener Corporation, for business purposes. (Tr. p 37).
25. If the taxpayer wants to use the plane for private corporate purposes, as opposed to charter, it must advise "PWS" to that effect. (Tr. p. 31).
26. When the aircraft is being chartered, FAA Part 135 regulations must be followed. (Tr. p. 32).
27. When the aircraft is flying employees of the taxpayer, or flying parts to customers, FAA Part 91 regulations must be adhered to. (Tr. p. 32).
28. The taxpayer used information from flight logs and invoices to prepare a summary document indicating number of hours flown, the number of trips flown, the number of passengers carried, revenue derived and whether the trip was for corporate use or for charter. (Tr. p. 40; Taxpayer's Ex. Nos. 3 and 4).

**CONCLUSIONS OF LAW:**

"Zip-em-Up" Fastener Corporation, taxpayer herein, purchased an aircraft on April 5, 19xx and remitted motor vehicle use tax to the Department in the amount of \$78,400 as a result of said purchase. Subsequent thereto, the taxpayer filed a RUT-25-X Amended Motor Vehicle Use Tax Return claiming that the aircraft was used as rolling

stock and therefore, exempt from the application of tax. The Department denied the taxpayer's claim, resulting in the taxpayer's protest and hearing request.

Section 3-55(b) of the Use Tax Act (35 **ILCS** 105 *et seq.*) sets forth the relevant exemption and provides in pertinent part as follows:

Sec. 3-55. Multistate exemption. To provide actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property by interstate carriers for-hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for-hire....

The basis for the Department's denial of the taxpayer's claim is that the lease entered into by the taxpayer/lessor and its lessee, "Prop Wash Services" was executed June 12, 19xx, while the aircraft was purchased April 5, 19xx. Accordingly, the taxpayer did not satisfy a requisite of the exemption; i.e., the lease was not executed or in effect at the time of purchase of the tangible personal property. The taxpayer relies upon a letter dated March 8, 19xx from Mr. "Vicomte de Beaujoulais", a representative of "Prop Wash Services", as evidence of its intent to purchase the aircraft. The letter merely states that "PWS" agrees to accept the aircraft into its leasing program once it is purchased by the taxpayer, and upon the completion of a part 135 conformity inspection. The letter also

conditions the acceptance into the leasing program upon the execution of a written lease containing "Prop Wash Services" usual terms and conditions.

Certainly, a letter expressing an intent to lease conditioned upon the purchase of an aircraft, the completion of an inspection and the execution of a written lease cannot be considered the equivalent of an executed lease. It is clear from the evidence elicited at hearing that as the purchase of the aircraft took place April 5, 19xx and the lease was executed on June 12, 19xx. Therefore, the statutory requisite that the lease be in effect or at least executed at the time of the purchase of the tangible personal property was not satisfied. On this basis alone, the taxpayer has failed to rebut the Department's prima facie case of tax liability.

The taxpayer provided testimonial and documentary evidence to indicate that the aircraft was used over 50 percent of the time as "rolling stock" moving in interstate commerce. Specifically, taxpayer's witness testified as to the amount of corporate use as opposed to charters, and the amount of intrastate use, as opposed to interstate use. The testimony was supported by a summary of corporate versus charter use in terms of number of passengers flown, flight hours, legs/cycles of trips and revenue derived from corporate as opposed to charter use. This information is summarized on a monthly basis from July 19xx through December 19xx.

It is my determination, however, that an analysis of whether the aircraft in fact qualifies as rolling stock moving in interstate commerce is unnecessary as the preliminary requisite that the lease be in effect prior to or at the time of purchase was not satisfied. Although not addressed by either party at hearing, there are other grounds for finding that the taxpayer has failed to prove its entitlement to the exemption. Namely, there is no

evidence that the lease that was ultimately executed was for one year or longer as required by statute. That is, assuming arguendo that the lease was executed or in effect at the time of the purchase of the aircraft, there is no evidence that the duration of the lease was for one year or longer as statutorily mandated. In fact, the terms of the lease specifically provide that it “shall continue from month to month unless terminated by either party upon thirty days prior written notice for any reason (the “Term”)”. (Dept. Ex. No. 2, p. 2). Clearly, the duration of the lease at issue was nonspecific and capable of being cancelled without explanation.

In addition, there is no evidence that the lessee, "Prop Wash Services", is an interstate carrier for hire as is required by the statute. Furthermore, the pertinent regulation provides as follows:

If the purchaser is a long term lessor (under a lease of one year or more in duration), the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee interstate carrier for hire.  
(86 Ill. Admin. Code ch. I, Sec. 130.340).

Again, there is no evidence pertaining to a certification provided to the seller of the aircraft wherein "PWS" was identified as an interstate carrier for hire, and stating that a long term lease was in effect. The evidence of record is simply insufficient to support taxpayer's claim of exemption, even if the lease had been in effect in the appropriate time frame. Given the facts in evidence as applied to the applicable statutory and regulatory law, the taxpayer has not proven its entitlement to the exemption. Case law is abundant and clear that statutes that exempt property from taxation must be strictly construed in favor of taxation and against exemption. The party claiming the exemption carries the burden of proving that it is entitled to the exemption. (Wyndemere Retirement

Community v. Department of Revenue, 274 Ill App.3d 455 (2<sup>nd</sup> Dist. 1995). Every presumption is against the intention of the state to exempt property from taxation. (Follett's Illinois Book & Supply Store, Inc. v. Isaacs, 27 Ill.2d 600 (1963)). Based upon the foregoing analysis, it is my determination that the Department's denial of the Claim for Credit is affirmed.

**RECOMMENDATION:**

It is my recommendation that the denial of the Claim for Credit is hereby affirmed.

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Administrative Law Judge